

RECEIVED

JUN 19 2003

Technology Center 2600

566.30812VC2

#9 letter
7/17/03
cw

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): H. OGAWA, et al
Serial No.: 09/812,582
Filed: March 21, 2001
For: DISK DRIVE APPARATUS AND METHOD OF MOUNTING
SAME
Group: 2651
Examiner: K. Wong

**REQUEST FOR RECEIPT OF SUPPLEMENTAL OFFICE ACTION
ALLEGEDLY MAILED JANUARY 27, 2003**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

June 19, 2003

Sir:

Applicants have received the Decision of the Director mailed January 15, 2003, granting the Petition To Reset Period For Reply, and indicating that the period for response will run from the date of the new mailing of a complete Office Action. Applicants, however, have not received the Supplemental Office Action, which was apparently mailed on January 27, 2003, as indicated on the copy of the printout of the PAIR system, attached.

Applicants have recently accessed the PAIR system since applicants did not receive any further communication after the receipt of the Decision dated January 15, 2003 in connection with the above-identified application. Therefore, applicants accessed the PAIR system and determined that a Supplemental Office Action had allegedly been mailed on January 27, 2003, which was not received in the offices of the undersigned attorney. The undersigned attorney contacted the Examiner in charge of this application and rather than await receipt of a Notice of Abandonment,

and filing a Petition to Withdraw the Erroneous Holding of Abandonment based upon non-receipt of the Office Action, applicants have considered it appropriate to file this paper in order to expedite the prosecution of this application.

Applicants submit that as apparent by the enclosed evidence and for the reasons discussed below, the Supplemental Office Action of January 27, 2003, indicated as being mailed on such date in the PAIR system has not been received in the offices of the undersigned attorney. Accordingly, pursuant to MPEP §711.03(c) and under the guidelines of Delgar v. Schuyler, 172 USPQ 513 (DDC 1971), it is respectfully requested that a new Supplemental Office Action be mailed in the above-identified application, and that a new period for response be set in accordance with the mailing date thereof.

In the following, it will be discussed the enclosed evidence establishing that the Supplemental Office Action indicated as being mailed January 27, 2003 in the PAIR system, in connection with the above-identified application, was never received in the offices of the undersigned.

That is, a search of the application file for the above-identified application and docket records of the undersigned of the law firm of the undersigned attorney, indicates that the Supplemental Office Action apparently mailed January 27, 2003, for the above-identified application, was not received in the offices of the law firm of the undersigned attorney. Moreover, the undersigned states that this Supplemental Office Action apparently mailed January 27, 2003, for the above-identified application, was not received by the undersigned attorney.

In the offices of the undersigned attorney, all mail which is received from the U.S. Patent and Trademark Office is given directly to the docketing department after having been opened in the mailroom of the offices of the law firm of the undersigned attorney. Responsive to receipt of such mail, as a first safeguard, the docketing department maintains a computer database, which stores information relating to the

filing of papers in the U.S. Patent and Trademark Office, receipt of papers from the U.S. Patent and Trademark Office and due dates for responding to papers received from the U.S. Patent and Trademark Office. The data in the computer database is backed up on a magnetic tape at the end of each workday.

Attached hereto is a printout of pertinent data in the computer database for the present application. The attached print-out shows data fields of "ACTION", "BASE", "DUE IN", "DUE", "EXTNS" (extensions), "FINAL", "EXT" and "RESPONSE" which will be referred to below. When a paper which must be responded to is received from the U.S. Patent and Trademark Office, the docketing department enters the mailing date of such paper in the "ACTION" data field. For example, in the present application, an Office Action was mailed on November 5, 2002 ("11/5/2002"). Therefore, when this Office Action was received in the offices of the undersigned, the docketing department entered "RESPONSE TO OA" in the "ACTION" field; "11/5/2002" in the "BASE" field; "3M" in the "DUE IN" field; "2/5/2003" in the "DUE" field; "3" in the "EXTNS" field (the "1" being due to the date of entry of the data); "5/5/2003" in the "FINAL" field; and no entry in the "RESPONSE" field (in which a date of the filing of the response is entered).

As is apparent from the attached listing of data from the computer database for the above-identified application Serial No. 09/812,582, attorney docket number 566.30812VC2, subsequent to the Office Action of "11/5/2002", there are three (3) entries indicating "REQ COMPL OA" dated 12/3/2002 and "PET. FOR COMPL OA" dated 12/3/2002, which represents the filing of the Request or Petition for Complete Office Action on 12/3/2002. Further, there is an entry of "PETITION GRANTED" dated "1/15/2003", which represents receipt of the Decision by the Director indicating that a new Office Action would be forwarded. There are no further entries in the computer database, establishing non-receipt of the Supplemental Office Action, apparently mailed January 27, 2003.

Furthermore, as a second safety cross-check against the computer database, the docketing department maintains a handwritten master docket book which has a set-up of one (1) page for each day of the year (an additional page or pages being stapled to the one page where there are an excess of entries for that page).

After data relating to a USPTO paper requiring a response has been entered into the computer database, the docketing department handwrites data relating to such paper into the master docket book on the page corresponding to the expiration of the maximum date for the response to such paper. The data is entered as follows, from left to right, where a response to a USPTO action is due: law firm docket number; last name of first-named inventor; U.S. application serial number; type of response due; and responsible attorney's initials. The last entry in a row is a date, indicating when the response was filed or the item may be scratched out if a response becomes unnecessary, such as when a Decision withdrawing the response is issued. Thus, attached hereto is a copy of a page from the master docket book for May 5, 2003, indicating the expiration of the statutory period for response to the Office Action dated November 5, 2002, for the above-identified application (566.30812VC2) which is highlight. As indicated, this item is scratched out which occurred in response to the receipt of the Decision dated January 15, 2003, granting the Petition for Complete Office Action. Also attached is the page for the master docket book for July 27, 2003, representing the end of the six month statutory period for response to an Office Action allegedly mailed January 27, 2003 for the above-identified application. As is apparent, a review of the listings on this page for July 27, 2003, shows no listing under the attorney docket number 566.30812VC2, nor other information relating to the above-identified application. It is respectfully submitted that the absence of an entry on July 27, 2003 in the master docket book further evidences the fact that the Supplemental Office Action allegedly

mailed January 27, 2003 was never received in the offices of the undersigned attorney.

For the reasons discussed above, it is respectfully submitted that the Supplemental Office Action allegedly mailed January 27, 2003 was not received in the offices of the undersigned attorney and applicants request that a new Supplemental Office Action be issued with a setting of a period of response in accordance with the mailing thereof, so that continuation of the prosecution of this application can be effected without the necessity to await receipt of a Notice of Abandonment for failing to file a response to the Supplemental Office Action allegedly mailed January 27, 2003.

For the foregoing reasons, applicants request issuance of a new Supplemental Office Action and starting of the period for response in accordance with the mailing thereof.

Respectfully submitted,



Melvin Kraus
Registration No. 22,466
ANTONELLI, TERRY, STOUT & KRAUS, LLP

MK/cee
Attachments
(703) 312-6600